

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ANDREW ALBERT

Plaintiff(s),

v.

**ORAL ARGUMENT re: Defendants' Motion to
Dismiss Plaintiff's Amended Complaint**

Case No. 20-C-901

OSHKOSH CORPORATION, et al.,

Defendant(s).

HONORABLE WILLIAM C. GRIESBACH presiding
Proceeding Held: December 18, 2020
Deputy Clerk: Cheryl

Time Called: 2:30 p.m.
Time Concluded: 3:32 p.m.
Tape: Zoom
121820

Appearances:

Plaintiff(s): Paul M. Secunda

Defendant(s): Jeremy P. Blumenfeld

Mr. Blumenfeld presents argument in support of Defendants' motion to dismiss the amended complaint. Mr. Blumenfeld states this case is governed by 7th Circuit cases *Divane*, and its predecessors *Loomis*, and *Hecker*. Mr. Blumenfeld compared the amended complaint in *Divane* and the amended complaint in this case and the cases are similar.

The Court comments on breach of fiduciary duties, process and allegations. The Court inquires as to what is necessary regarding the claim.

2:38 p.m. - Mr. Blumenfeld responds and compares *Divane* and this case. Mr. Blumenfeld refers to investment options in chart in paragraph 172 of the amended complaint. Mr. Blumenfeld discusses passive and active investments, and range of fees.

2:44 p.m. – Mr. Secunda presents argument on behalf of Plaintiff. Mr. Secunda states that these are not the same allegations as set for in *Divane*. Mr. Secunda explains breach of fiduciary duty. Plaintiff has its own facts and is distinguished from *Divane*. Mr. Secunda comments on different types of fees and costs.

2:54 p.m. – The Court inquires as to record keeping claim.

2:54 p.m. – Mr. Secunda responds as to fact specific ruling in *Divane* and addresses net investment expense. Mr. Secunda cites *Hecker*.

3:03 p.m. – The Court inquires as to time regarding quotes. Mr. Secunda responds.

3:05 p.m. - Mr. Blumenfeld responds as to fees and costs. Mr. Blumenfeld addresses record keeping costs. The complaint does not distinguish those services.

3:17 p.m. - Mr. Secunda replies. Plaintiff does not have multiple vendors and record keeping is not the same.

3:28 p.m. – Mr. Blumenfeld responds as to choices and services for participants. Mr. Blumenfeld addresses paragraph 27 of the amended complaint.

3:32 p.m. – The Court takes the matter under advisement. Hearing concluded.